

**VMIC, Inc.**  
**Standard Conditions of Sale (Domestic)**

The sale of any services and products ordered by the Customer is expressly conditioned upon the terms and conditions contained or referred to herein. Any additional or different terms and conditions set forth in the Customer's purchase order or similar communication are objected to and will not be binding upon VMIC, Inc. (herein called VMIC) unless specifically assented to in writing by VMIC's authorized representative. Authorization by the Customer, whether written or oral, to furnish services and incidental products will constitute acceptance of these terms and conditions.

**1. WARRANTY**

**1.1** VMIC warrants to the Customer that VMIC products and services sold will be free from defects in material, workmanship and title and will conform to any mutually agreed upon specifications. If any failure to meet this warranty (excluding any defects in title) appears within three (3) years from the date of shipment of VMIC's standard hardware products, with the exception of hardware products contained in the VMIC Service Parts Price Catalog which have an identical warranty for a period of ninety (90) days after shipment from VMIC, or ninety (90) days from completion of the services, as applicable, VMIC will correct any such failure by re-performing any defective portion of the services furnished, and, with respect to products, at its option, (i) by repairing any defective or damaged part or parts of the products, or (ii) by making available, F.O.B. Customer's plant or other point of shipment, any necessary repaired or replacement parts. The warranty period of any replacement or repaired product or part shall terminate after ninety (90) days (thirty (30) days for service parts), or with the termination of the warranty period with respect to the original product or part for all replacement parts supplied or repairs made during the original warranty period. An extended warranty may be made available for VMIC hardware products; please consult the pricing catalog. If re-performance is not practicable, VMIC will furnish without charge services in an amount essentially equal to those which, in VMIC's sole judgment, would have been required for re-performance. The warranties and remedies set forth herein are conditioned upon: (i) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of VMIC; and (ii) Customer promptly notifying VMIC of any defects and, if required, promptly making the product available for correction.

User-level repairs are not recommended. Customer repairs or attempted repairs will void the warranty.

Defective products may be returned to VMIC for warranty repair at VMIC's expense provided that the point of shipment for the customer is within the United States of America, and the customer follows the procedure below.

1. Customer obtains a Call Ticket Number and a RMA Number from VMIC's Customer Service Department.
2. Defective product must be properly boxed and weighed.
3. VMIC will give UPS the Call Ticket which will then be sent to the UPS office at the shipping point for pick-up and surface shipment back to VMIC.

Upon completion of the repair or replacement of the product(s), VMIC will ship the product back to the customer via UPS Surface also at VMIC's expense. The customer should be aware that this process could take up to eight (8) days for travel each way.

If this delay cannot be tolerated, the customer has the option to return the defective product(s), at the customer's expense, in a manner that does not take as long (i.e., two-day air, one-day air, etc.). VMIC will then return the repaired or replaced product in the same manner it was shipped.

**1.2** VMIC warrants non-VMIC manufactured products only to the extent that the manufacturer's warranty allows VMIC to transfer such manufacturer's warranty to Customer. VMIC will pass through to Customer any such warranties. Customer's sole remedy for breach of such warranty shall be the remedy offered by and available from the manufacturer, if any. VMIC

shall have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to non-VMIC manufactured products.

Certain VMIC or third-party products purchased by Buyer hereunder may contain remanufactured subassemblies or parts which have been cleaned, refinished, inspected, and tested to new-product standards. The warranty for any such product will be as provided in this agreement or any applicable warranty of said third party.

**1.3** The preceding paragraphs set forth the exclusive remedy for all claims (except as to title) based on failure of, or defect in, products or services sold hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the warranty period, all such liability shall terminate. The foregoing warranty is exclusive and is in lieu of all other warranties whether written, oral, implied or statutory. EXCEPT AS SET FORTH IN SECTION 2 BELOW OR IN ANY STATEMENT OF WARRANTY ACCOMPANYING VMIC PRODUCTS, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. VMIC DOES NOT WARRANT ANY PRODUCTS OR SERVICES OF OTHERS WHICH CUSTOMER HAS DESIGNATED.

**2. PATENTS**

**2.1** VMIC warrants that any VMIC products sold hereunder, and any part thereof, shall be free of any rightful claim of any third party for infringement of any United States patent. If promptly notified in writing and given authority, information and assistance, VMIC shall defend, or may settle, at its expense, any suit or proceeding against the Customer based on a claimed infringement which would result in a breach of this warranty, and VMIC shall pay all damages and costs awarded therein against the Customer due to such breach. In case any products are in such suit held to constitute such an infringement and the use for the purpose intended of said products is enjoined, VMIC shall, at its expense and option, either procure for the Customer the right to continue using said products, or replacing same with non infringing products, or modify same so they become non-infringing, or remove the products and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Customer. The foregoing states the entire liability of VMIC for patent infringement.

**2.2** The preceding paragraph shall not apply to any products specified by the Customer and not of VMIC manufacture, or manufactured to the Customer's design, or to the use of any products furnished hereunder in conjunction with any other products in a combination not furnished by VMIC as part of the transaction. As to any products, or use in such combination, VMIC assumes no liability whatsoever for patent infringement and the Customer will hold VMIC harmless against any infringement claim arising therefrom.

**3. EXCUSABLE DELAYS**

**3.1** VMIC shall not be liable for delay due to: (i) causes beyond its reasonable control, or (ii) acts of God, acts of the Customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (iii) inability to obtain or delay in

obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

**3.2** In the event VMIC is delayed by acts of the Customer or by prerequisite work by other contractors or suppliers of the Customer, VMIC shall be entitled to an equitable price adjustment in addition to extension of the time of performance

#### **4. SALES AND SIMILAR TAXES**

**4.1** In addition to any price specified herein, the Customer shall pay, or reimburse VMIC for, the gross amount of any present or future sales, use, excise, income, value-added or other similar tax applicable to the price, sale or furnishing of any services or products hereunder, or to their use by VMIC or the Customer, or the Customer shall provide VMIC with evidence of exemption acceptable to the taxing authorities.

#### **5. PAYMENTS AND FINANCIAL CONDITION**

**5.1** Except to the extent otherwise specified by VMIC in its quotation, pro rata payments shall become due without setoff as shipments are made. If VMIC consents to delay shipments after completion of any product, payment shall become due on the date when VMIC is prepared to make shipment. In the event of any such delay, title shall pass and products shall be held at Customer's risk and expense. Unless otherwise stated in writing, payment terms are net thirty (30) days. All payments shall be made without set-off for claims arising out of other sales by VMIC. VMIC retains a security interest and right of possession in the articles until Buyer makes full payment, and Customer agrees to sign documentation as reasonably necessary at VMIC's request to perfect such interest.

**5.2** If the financial condition of the Customer at any time does not, in the judgement of VMIC, justify continued performance on the terms of payment previously agreed upon, VMIC may require full or partial payment in advance or shall be entitled to terminate the contract and receive termination charges. In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, VMIC shall be entitled to terminate the agreement at any time during the period allowed for filing claims against the estate and shall be entitled to payment for its termination charges.

#### **6. LIMITATIONS OF LIABILITY**

**6.1** VMIC'S LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS OR SERVICES COVERED BY OR FURNISHED UNDER THE CONTRACT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE CONTRACT PRICE OF THIS AGREEMENT. EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED, ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD SPECIFIED IN SECTION 1 ABOVE.

**6.2** IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL VMIC, ITS EMPLOYEES AND SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF

ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF THE CUSTOMER FOR SUCH DAMAGES AND THE CUSTOMER WILL INDEMNIFY VMIC, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF THE PRODUCTS OR SERVICES BEING PROVIDED BY VMIC WILL BE FURNISHED BY THE CUSTOMER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE CUSTOMER AND A THIRD PARTY, THE CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING VMIC AND ITS SUPPLIERS THE PROTECTION OF THIS AND THE PRECEDING PARAGRAPH 6.1.

**6.3** The products to be licensed or sold hereunder are not intended for use in any nuclear, chemical or weapons production facility or activity, or other activity where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, VMIC disclaims all liability for any damages arising as a result of the hazardous nature of the business in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend VMIC, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), or any other legal theory, regardless of whether VMIC had knowledge of the possibility of such damages.

**6.4** If VMIC furnishes the Customer with advice or assistance concerning any products or systems which is not required pursuant to the agreement, the furnishing of such advice or assistance will not subject VMIC to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

#### **7. DELIVERY**

**7.1** Delivery of products will be made F.O.B. at the point of shipment to the Customer. Unless otherwise directed by the Customer, VMIC will declare minimum value on goods shipped to obtain lowest freight charges.

#### **8. GENERAL**

**8.1** VMIC reserves the right to subcontract any of the work to one or more subcontractors.

**8.2** The delegation or assignment by Customer of any or all its duties or rights hereunder without VMIC's prior written consent shall be void.

**8.3** Any information, suggestions or ideas transmitted by the Customer to VMIC, its agents, employees or subcontractors are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of VMIC.

**8.4** VMIC shall comply with all applicable state and federal laws, including but not limited to, the Fair Labor Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970 (OSHA), laws related to nonsegregated facilities and equal employment opportunity (including the seven paragraphs appearing in Sec. 202 of Executive Order 11246, as amended), and all standards, rules, regulations, and orders issued pursuant to such state and federal laws.

**8.5** Software or Firmware furnished shall be provided pursuant to VMIC's applicable Software License Agreement, the terms and conditions of which shall take precedence over these Conditions of Sale with respect to the provision of such Software or Firmware.

## 9. EXPORT

9.1 Customer shall not export (or reexport), directly or indirectly, the products supplied hereunder or any portion thereof, without first obtaining VMIC's written consent and any required license or approvals from the United States Government.

## 10. GOVERNMENT CONTRACT CONDITIONS

10.1 If Customer's purchase order is placed pursuant to a U.S. Government contract, the Government clauses required to be passed on to subcontractors are subject to review by VMIC prior to final acceptance. Cost or pricing data shall be provided only upon prior notification to VMIC and written agreement of VMIC. Unless otherwise agreed in writing, VMIC shall retain all right, title, and interest in any and all data to be provided pursuant to this order or contract.

## 11. CANCELLATION

11.1 Customer may, prior to the shipment date requested in Customer's purchase order, cancel delivery of any equipment ordered provided that: (a) VMIC has received written notice of such cancellation, and (b) Customer shall pay a cancellation charge for each cancelled unit as follows, which shall constitute Customer's entire liability to VMIC with respect to the cancelled unit:

<b>Number of days prior to the scheduled shipment date that notice of cancellation is received by VMIC:</b>	<b>Cancellation charge per unit (expressed as percentage of the catalog price):</b>
---	---

### STANDARD PRODUCTS

	<u>Under \$100K:</u>	<u>Over \$100K Per Order or Any Line Item Exceeding 25 Units</u>
45 days and over	25%	30%
30 to 44	30%	40%
10 to 29	40%	50%
0 to 9	50%	60%

### Special Products\*

45 days and over	50%
30 to 44	60%
10 to 29	80%
0 to 9	100%

\*A special product is any product developed by VMIC under special contract or any order requiring conformal coating, extended temperature components, or any type of customization requested by the customer.

## 12. SHIPMENT DELAY FEE

12.1 In order to compensate for inventory costs and material handling/storage costs, VMIC will assess a fee for all orders for which Customer requests a delay of shipment of goods if the request is not received, in writing, at least 30 days in advance of VMIC's originally scheduled ship date. A fee of one percent (1%) of the total value of the goods per month will be assessed for each month that the shipment of goods is delayed.

## 13. REPAIR AND REPLACEMENT POLICY

13.1 **WARRANTY REPAIR:** Contact VMIC's Customer Service Department for a Return Material Authorization (RMA) Number. This RMA Number must be obtained prior to any return and should be referenced on all documentation relating to the return (i.e., shipping documents, shipping label, purchase order, correspondence, etc.). The following information is needed when requesting a RMA Number:

1. Model number and option
2. Serial number and assembly revision
3. Description of failure
4. Shipping information
5. Point of contact and phone number
6. Billing information (required if out-of-warranty)
7. Purchase order number (required if out-of-warranty)

13.2 **OUT-OF-WARRANTY REPAIR:** All out-of-warranty repairs require a purchase order. The purchase order number should refer to the RMA Number which is assigned by the Customer

Service Department. Evaluation is 20% of the current list price of Standard Products, and 30% of list price for Service Parts. Evaluation charge is applied to any return where only an evaluation is performed to determine the health of the product but no rework or repair is performed.

13.3 **REPAIR CATEGORY:** VMIC's repair policy of Standard Products is divided into three categories depending on the item to be repaired. These categories are:

1. Product Exchange
2. Fixed Price Repair
3. Product Replacement

**Category 1 (Product Exchange)** represents the fastest turnaround of the three categories. In this case, the customer obtains a RMA and sends the malfunctioning product to VMIC. VMIC will return an operational product to the customer within seventy-two (72) hours of receipt (international destinations may take longer) provided VMIC has the product in stock. Product exchange is only allowed if the returned product is repairable. In the event that the failing product is not repairable, product replacement is sixty-five percent (65%) of current list price for Standard Products. For standard, non-warranty products, the exchange fee shall be fifty-five percent (55%) of the current list price. The exchange pertains to non-warranty cases only. Evaluation is twenty percent (20%) of the current list price for "no problem found" on all returned Standard Products. To qualify for an exchange the failing product must be repairable/usable. Exchange parts may be used or refurbished. If exchange parts are not available, a service charge of \$3,500 for production set-up is required. The minimum order is ten (10) boards at the current list price. VMIC reserves the right to change prices, service charges, and/or minimum purchases for all such products without notice. Because of parts obsolescence such products may not be available or lead times may be excessive.

For Service Parts, evaluation is thirty percent (30%) of the current list price for "no problem found" on all returned products. The product exchange fee is sixty-five percent (65%) of current list price. To qualify for an exchange the failing product must be repairable/usable. Product exchange pertains to non-warranty cases only. In the event the failing product is not repairable, replacement is seventy-five percent (75%) of current list price.

**Category 2 (Fixed Price Repair)** applies to products returned to VMIC for repair and subsequent return to the customer. Fixed price repair is thirty-five percent (35%) of the current list price of Standard Products, and forty-five percent (45%) of the list price for Service Parts. Evaluation charge is applied to any return where only an evaluation is performed to determine the health of the product but no rework or repair is performed. In the event the failing product is not repairable, product replacement is sixty-five percent (65%) of current list price for Standard Products.

**Category 3 (Product Replacement)** applies to any product that is not repairable due to customer misuse or any other event which is not VMIC's fault. The product may be replaced at the customer's discretion at a price of sixty-five percent (65%) of the current list price for Standard Products, and seventy-five percent (75%) of the current list price for Service Parts. Replacement parts may be used or refurbished. If exchange parts are not available for Service Parts, a service charge of \$3,500 for production set up is required. The minimum order is ten (10) boards at the current list price. VMIC reserves the right to change prices, service charges and/or minimum purchases for all such products without notice. Because of parts obsolescence such products may not be available or lead times may be excessive.

13.4 **WARRANTY ON REPAIRS:** Standard Products repaired by VMIC are warranted against defects in workmanship and material for a period of ninety (90) days from date of shipment to the Customer for all products that are repaired out of warranty. Service parts repaired by VMIC are warranted against defects in workmanship and material for a period of thirty (30) days from date of shipment to the Customer for all parts that are repaired out of warranty. See Section 6 for in-warranty repair information.

13.5 **SHIPPING CHARGE RESPONSIBILITY:** Shipping charges are the Customer's responsibility. Refer to Section 1.1 for the procedure to return a product at VMIC's expense for warranty repair.

13.6 **EXCLUSIONS:** Repair rates may not apply to products which have received unusual physical or electrical damage. In such cases, VMIC will provide an estimated price for repair. The Customer may then, at his option, choose to have the product repaired at the estimated price, returned unrepaired at no charge, or replaced at sixty-five percent (65%) of VMIC's current list price, and seventy-five percent (75%) of the current list price for Service Parts.

**13.7 PAYMENT:** Payment is due upon delivery or at VMIC's option, net thirty (30) days from the date of delivery. Service Parts rates above will apply to Standard Products at the time that the Standard Products are reclassified as Service Parts.

**13.8 SHIPPING INSTRUCTIONS:** The type of packaging used to ship the product depends on whether the product is shipped singly, in a chassis, or packaged with other products. The shipper should carefully pack the product(s), using the same precautions listed in the "unpacking procedures" paragraph in the product instruction manual (Section 5). The user should utilize the same (or equivalent) protective packaging container for reshipment as was provided by VMIC. Approved ESD procedures are recommended when handling VMIC products.

#### **14. COMPLETE AGREEMENT**

**14.1** This Agreement, along with these terms and conditions and any other terms and conditions or documents referenced in said agreement, contains the complete agreement between the parties, and no modification, amendment, recision, waiver or other change will be binding on VMIC unless assented to in writing by VMIC's authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on VMIC. The invalidity, in whole or part, of any of the foregoing sections or paragraphs of the contract will not affect the remainder of such article or paragraph or any article or paragraph of the contract.

**14.2** This Agreement shall be governed by the laws of the State of Virginia, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.